IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2348 OF 2006

Prakash Pandurang Sawant ..Petitioner.
Vs.
Punjab & Sind Bank & Ors. ..Respondents.

WITH
WRIT PTITION NO.2110 OF 2006

Laxman Sakharam Sawant ..Petitioner.
Vs.
Punjab & Sind Bank & Ors. ..Respondents.

WITH
WRIT PTITION NO.2349 OF 2006

Dharmendra A. Rami ..Petitioner.
Vs.
Punjab & Sind Bank & Ors. ..Respondents.

WITH
WRIT PTITION NO.2391 OF 2006

Dilip Yashwant Jadhav ..Petitioner.
Vs.
Punjab & Sind Bank & Ors. ..Respondents.

WITH
WRIT PTITION NO.2485 OF 2006

Pratapsingh Devisingh Rawat ..Petitioner.
Vs.
Punjab & Sind Bank & Ors. ..Respondents.

WITH
WRIT PTITION NO.2600 OF 2006

Mahesh Mahadeo Dalvi ..Petitioner.

Vs.

Punjab & Sind Bank & Ors. ..Respondents.

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Shri R.J. Ghag for the Petitioners.

Shri S.C. Naidu with Shri T.R. Yadav and Shri Manoj Gujar i/b C.R. Naidu & Co. for Respondent No.1.

Ms. Leena Patil for Respondents 2 and 3 – Union of India.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

23rd February, 2007.

ORAL JUDGMENT. :

1. In this batch of writ petitions under Article 226 of the Constitution, the workmen have questioned an award of the Central Government Industrial Tribunal on a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. Before the Court both counsel appearing for the Petitioners and counsel appearing for the management of the Respondent Bank have urged submissions in Writ Petition 2348 of 2006 as the lead petition. The learned counsel are agreed that the facts of that Writ Petition are representative in nature to cover the cases of all the workmen involved in this batch. The awards of the Tribunal are pari materia and since common questions of law have been urged

in the entire batch of petitions, the petitions are, by consent being disposed of together.

2. Prakash Pandurang Sawant, the Petitioner before the Court in Writ Petition 2348 of 2006 was employed as a Peon on a temporary basis by the First Respondent. The initial date of appointment was 10th June, 1985. Each of the appointments of the workman was for a specified period, on a specific designation in a specified branch of Punjab and Sind Bank at Mumbai. The workman in question worked at Thane, Opera House, Vikhroli, Pedder Road, Khalsa College, Bhandup and Thane during the period of his temporary engagement. The services of the workman were last engaged at the Bhandup Branch between December 1994 and 12th March, 1995 on which date the appointment which was for a specified period came to an end. The same pattern, it is undisputed before the Court, was followed in the case of the other five workmen who have moved the Court in the companion petitions. Each of the workmen was engaged under letters of appointment which were for a specified period, on a designated job and at a specified branch of the Bank in the city of Mumbai. All the workmen were engaged as Peons on a temporary basis, for a

specified period at the branches of the Bank in the city. According to the Bank their services were required either for filling up leave vacancies or for carrying out work of a temporary nature such as voucher stitching and record sorting in the event that permanent employees were unable to cater to the work load.

3. The First Respondent is a nationalized bank, having been acquired by the Central Government under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Amongst the sub-ordinate staff of the Bank there are four classes of employees : permanent, probationary, temporary and part-time employees who are governed by Clause 508 of the Shastri award. The sub-ordinate staff in nationalized banks came to be known as award staff. During the period under reference, the recruitment of sub-ordinate staff was being made by the Banking Service Regulation Board (BSRB). The appointments were made in accordance with the norms laid down by the Government of India which inter alia provided for reservation for various categories including the Scheduled Castes and Scheduled Tribes. The rules of recruitment are stated to have prescribed the criteria in regard to age and educational qualification in accordance

with the guidelines of the Bureau of the Public Enterprises of the Government of India. Rules were framed in exercise of the powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. According to the Bank the recruitment of sub-ordinate staff was carried out on a zonal basis. Preference being given to candidates in the State where the branch was located. All appointments to permanent vacancies were required to be advertised and a regular mode of selection was provided for carrying out recruitments.

4. Before the Court it is an undisputed position that none of the workmen to whom the present batch of petitions relates were recruited by following the regular process of recruitment. Each of the workmen was engaged from time to time, for fixed periods as the exigencies of work required.

5. A memorandum of settlement was arrived at on 16th October, 1992 between the management of the First Respondent and the workmen, who were represented by the All India Punjab and Sind Bank Staff Organization, under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947. The settlement

reflected an understanding that the cases of temporary employees for appointment against permanent vacancies notified by the Bank at the State level would be considered for absorption in the sub-ordinate cadre in the following manner viz :

> "A) Firstly, those employees who have completed 240 days in the preceding 12 months to be reckoned from the date last served or in any other block of 12 consecutive months commencing from 15/4/80. Their interse seniority would be determined statewise on the basis of the date on which they first worked as temporary employees as per bank's available records.
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> B) Thereafter, the other employees not falling in the above category but have atleast worked for 90 days from 1.1.82 to date of this settlement i.e. 16.10.92 shall be given one time opportunity to appear in the selection process of the Bank and their seniority would be determined and selection will be done by preferring those who have joined first in the bank, serialwise that is first-cum-first serve."

6. The settlement clarified, however, that all cases of temporary employees would be considered subject to verification by the Bank and in accordance with the recruitment norms. However, a relaxation was provided in regard to age and qualifications which would be reckoned on the date on which the employee had first worked in the Bank. Government guidelines in regard to the Scheduled Castes and Scheduled Tribes and physically handicapped employees were required to be followed.

On regularization, the entry and seniority of the employee would be reckoned from the date of joining service as a regular employee on probation in the permanent sub-ordinate cadre. Subsequently another settlement was entered into on 13th August, 1994 between the management of the First Respondent and the staff organization. Under the terms of the settlement paragraphs A and B quoted above were modified in the following terms :

> "PARA 'A' : Firstly, those employees who have completed 240 days in the preceding 12 months to be reckoned from the date last served or in any other block of 12 consecutive months commencing from 1.1.1982 to 31.12.1989. Their interse seniority would be determined statewise on the basis of the date on which they first worked as temporary employees as per Bank's available records.
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> PARA 'B' : Thereafter, the other employees not falling in the above category but have atleast worked for 90 days from 1.1.1982 to 31.12.1989 shall be given one time opportunity to appear in the selection process of the Bank and their seniority would be determined and selection will be done by preferring those who have joined first in the Bank, serial-wise that is first-cum-first serve."

All other terms of the earlier settlement, however, were to continue to govern.

7. All the Petitioners before the Court were considered for regular absorption in terms of the settlement dated 16th October, 1992 as modified on 13th August, 1994. The Petitioners were, however, not considered fit for regularization.

8. A demand was raised before the Central Government upon which a reference was made to adjudication by the Industrial Tribunal. The references culminated in awards of the Industrial Tribunal, all of the same date - 9th March, 2006. In all the cases, common questions were raised before the Tribunal and the awards are pari materia. The Industrial Tribunal held that while on the one hand it was not correct that the workmen had rendered service continuously and uninterruptedly, it was evident from the record that each workman was given appointment by the Bank for a fixed period and the appointment had come to an end upon the expiry of the period. The employment of each workman was admittedly on a temporary basis. The Tribunal came to the conclusion that each of the workmen had in fact completed a period of 240 days which was evident from the certificate issued by the Bank and by the circumstance that the Bank had itself called each one of the workmen for interviews for selection against the permanent

vacancies in terms of the settlements under which all temporary workmen who had worked for 240 days were to be given an opportunity for being considered for selection against a permanent vacancy. Two submissions were urged before the Industrial Tribunal. The first submission was that in terms of the Model Standing Orders, more particularly Model Standing Orders 4-A to 4-E the workmen must be deemed to be automatically rendered permanent upon the completion of 240 days irrespective of the availability of a vacancy and a settlement with the recognized union would not override the plain consequences of the standing orders. The second submission was that their termination was in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and was therefore illegal. Dealing with these two submissions, the Tribunal came to the conclusion that the termination of the services of the workmen was in breach of the provisions of Section 25-F of the Industrial Disputes Act, 1947. The Tribunal held that by virtue of Section 38-B of the Bombay Shops and Establishments Act, the Model Standing Orders were attracted and the provisions of Model Standing Order 4-C which were mandatory could not be overridden by any settlement. Under Model Standing Order 4-C a workman was held to be entitled to

automatic regularization on the completion of 240 days. The Tribunal, therefore, held that the failure of the Bank to regularize the services of the workmen was illegal. Nonetheless the Tribunal declined to grant relief of reinstatement to the workmen on the ground that each of the workmen had obtained a back door entry which was not permissible under the law as applicable to public sector undertakings and nationalized banks. A selection against a permanent vacancy, the Tribunal ruled, had to be in accordance with the rules and regulations. The Bank had followed all the prescribed norms for recruitment against permanent vacancies and all the temporary workmen who had completed 240 days of work had been invited for interviews. The Bank, it was held, has followed a bonafide procedure and the workmen were given the opportunity to participate in the process of selection. Having failed in the selection process, the Tribunal held that the workmen had lost their claim or lien for regularization. There being no vacancy at present in any branch of the Bank in the State of Maharashtra, the Tribunal held that it was not open to the workmen to compel the Bank to absorb them or regularize them in service.

9. On behalf of the workmen, the awards of the Industrial

Tribunal have been questioned on three grounds of challenge which have been placed for the consideration of the Court at the hearing of the Petitions : The first submission is that the workmen had put in 240 days of service and that it was consequently not open to the Bank to terminate their services without the payment of retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947. Absent compliance with Section 25-F, it was urged, the retrenchment was null and void.

10. The second submission was that each of the workmen having completed 240 days in a year, the benefit of Clause 4-C of the Model Standing Orders framed under the Bombay Industrial Employment (Standing Orders) Rules 1959 had to be extended to the Petitioners who are consequently entitled to permanency in the employment of the Bank.

11. Thirdly, it was urged that under the terms of the settlement that were entered into by the Bank with the staff organization, each of the Petitioners was ipso facto entitled to absorption upon the completion of 240 days of service and that none of the Petitioners ought to have been required to appear

before the selection panel or to undergo the selection procedure. Each of the grounds of challenge can be taken up seriatim and while doing so, the submission which has been urged on behalf of the First Respondent in response thereto would be considered as well.

12. Insofar as the first ground of challenge is concerned, it is an undisputed position that the engagement of the Petitioners was temporary in nature. Each of the Petitioners was engaged for a specified term. Upon the expiry of the period of engagement, the tenure during which the Petitioners came to be engaged stood concluded as a result of the non renewal of the contract of employment. There is merit in the submission that was urged on behalf of the First Respondent therefore that the termination resulting from a non-renewal of a contract of employment will not fall within the definition of the expression “retrenchment” for the purposes of Section 2(oo) of the Industrial Disputes Act, 1947. Section 2(oo) defines retrenchment to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. The definition, however, specifically excludes certain

categories of termination and one of them, in clause (bb) is the termination of the service of a workman as a result of a non-renewal of the contract of employment between the employer and the workman concerned on its expiry or when a contract is terminated under a stipulation in that behalf contained therein. This position is amplified in several judgments of the Supreme Court and at this stage, it would be perhaps appropriate to advert to two of the recent judgments on the subject. In **Managing Director, Karnataka Handloom Development Corporation Ltd. v. Mahadeva Laxman Raval**[1], the Supreme Court adverted to the earlier decisions inter alia in **S. M. Nilajkar v. Telecom District Manager, Karnataka**[2], **Morinda Coop. Sugar Mills Ltd. v. Ram Kishan**[3], **Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd.**[4] and **Kishore Chandra Samal v. Orissa State Cashew Development Corporation Limited Dhenkanal**[5]. The Supreme Court has clearly held in these judgments that the disengagement of an employee upon the expiry of the period of contractual appointment or on the completion of the work for which

1 2006 (12) Scale 133.
2 (2003) 4 SCC 27.
3 (1995) 5 SCC 653.
4 (1997) 10 SCC 599.
5 2006 (1) SCC 253.

an employee was engaged would not amount to retrenchment even if the employee had completed work to the extent of 240 days in the immediately preceding calender year. Section 25-F of the Industrial Disputes Act, 1947 applies to a a case of retrenchment. The termination of the services of a workman as a result of the non renewal of a contract of employment would not amount to retrenchment as defined in Section 2(oo) and consequently, Section 25-F will not be attracted. The same principle was reiterated in a judgment of two Learned Judges of the Supreme Court in **Municipal Corporation, Ludhiana v. Ram Pal**[6]**.** Moreover, at this stage it would be also necessary to note that following the decision in **Indian Cable Co. Ltd. v. Workmen**[7], the Supreme Court has held that when a casual employee is employed in different establishments even under the same employer (for example, the Railway Administration which has different administrative set ups, different requirements and different projects), the concept of continuous service cannot be applied. In such a case where the tenure of a workman has ended in one of the establishments and the workman has joined another, the same would not amount to his being in continuous service. Though the

6 2006 II LLJ 235.
7 (1962) I LLJ 409.

decision in **Indian Cable Co. Ltd.** was laid down in the context of Section 25-G, the Supreme Court has held that the law for the purpose of counting the days of work in different departments controlled by an apex corporation will be governed by the same principles. (**DGM Oil & Natural Gas Corporation Ltd. v. Ilias Abdulrehman**[8] and **Union of India v. Jummasha Diwan**[9]).

13. In these circumstances, for the aforesaid reasons, the first submission cannot be accepted.

14. The second submission that was urged on behalf of the workmen revolves around the applicability of the provisions of Model Standing Order 4-C. Model Standing Order 4-C upon which reliance has been placed is a part of the Bombay Industrial Employment (Standing Orders) Rules, 1959. Insofar as is material, Model Standing Order 4-C provides that a badli or temporary workman who has put in 240 days of uninterrupted service in the aggregate in an establishment not being of a seasonal nature, during a period of the preceding twelve calender months, shall be made permanent in that establishment by an order in writing signed

8 (2005) 2 SCC 183.
9 (2006) 8 SCC 544.

by the Manager. The question, however, is as to whether the provisions of Model Standing Order 4-C will apply in the first instance to the First Respondent. The Industrial Employment (Standing Orders) Act, 1946 applies to every industrial establishment wherein fifty or more workmen are employed or were employed on any day of the preceding twelve months. The expression 'appropriate government' is defined by Section 2(b) to mean in respect of industrial establishments under the control of the Central Government or Railway Administration, or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government. The expression 'employer' is defined in Section 2(d)(ii) to mean the authority appointed by the Government of India in any industrial establishment under the control of any department of the Government of India. Section 2(e) defines the expression 'industrial establishment'. Under Section 15 of the Act, the appropriate government is empowered after previous publication to make rules in order to carry out the purposes of the Act. In exercise of the powers conferred by Section 15 the then State of Bombay had issued the Bombay Industrial Employment (Standing Orders) Rules, 1959.Insofar as those establishments in respect of which the appropriate

government is the Central Government, the Industrial Employment (Standing Orders) Central Rules 1946 which were framed by the Central Government govern. Insofar as the First Respondent is concerned, the appropriate government is clearly not the State Government, but the Central Government since the First Respondent is within the meaning of Section 2(b) under the control of the Central Government. There is no corresponding provision like Model Standing Order 4-C in the Central Rules. The Tribunal, it must be noted, seems to have proceeded on the basis that Model Standing Order 4-C would stand attracted to the First Respondent. The finding of the Tribunal is ex facie erroneous since it ignores the position that in respect of an establishment such as that of the First Respondent where the appropriate government is the Central Government it is the Central Rules of 1946 that would apply. The Tribunal was manifestly in error in proceeding on the basis that the Bombay Rules of 1959 were attracted. The Tribunal, in support of its conclusion, sought to derive sustainance from the provisions of Section 38-B of the Bombay Shops and Establishments Act, 1948. Counsel appearing for the Petitioners supported the judgment of the Tribunal by urging before the Court that the First Respondent is governed by the Bombay Shops and Establishments Act, 1948,

being an establishment as defined in Section 2(8) thereof.

15. In order to appreciate the submission it would be appropriate to refer to the provisions of Section 38-B of the Bombay Shops and Establishments Act, 1948 which are to the following effect :

> "38-B. Application of Industrial Employment (Standing Orders) Act to establishments. - The provisions of the Industrial Employment (Standing Orders) Act, 1946, in its application to the State of Maharashtra (hereinafter in this section referred to as "the said Act"), and the rules and standing orders (including model standing orders) made thereunder from time to time, shall, *mutatis mutandis,* apply to all establishments wherein fifty or more employees are employed and to which this Act applies, as if they were industrial establishment within the meaning of the said Act."

16. What Section 38-B does is to extend the applicability of the Industrial Employment (Standing Orders) Act, 1946 in the State of Maharashtra to all establishments wherein fifty or more more employees are employed. Consequently, the rules and standing orders made thereunder from time to time shall *mutatis mutandis* apply to all establishments. The expression 'establishment' is defined by Section 2(8) to inter alia mean a commercial establishment and the expression 'commercial establishment' is

defined in Clause 4 to inter alia mean an establishment which carries on any business, trade or profession or any work ancillary thereto. As already noted earlier, the Industrial Employment (Standing Orders) Act, 1946 applies to industrial establishments as defined in Section 2 (e) of the Central Act. The effect of the Bombay Shops and Establishments Act, 1948 is to extend the provisions of the Central Act and the rules and standing orders made thereunder to a wider category of establishments which fall in the definition contained in Section 2(8) of the said Act. That, however, will not assist the case of the Petitioners any further for the simple reason that the First Respondent is in any event governed by the provisions of the Industrial Employment (Standing Orders ) Act, 1946. That being the position, there is no question of the provisions of the Central Act being extended to the First Respondent by the deeming fiction created by Section 38-B. As an establishment governed by the Central Act, and in whose case the Central Government is the appropriate government, the First Respondent cannot be governed by the Model Standing Orders framed in relation to the State of Maharashtra by the Bombay Industrial Employment (Standing Orders) Rules, 1959 since it is the Central rules that apply.

17. Before concluding the discussion on this aspect of the matter, it would also be necessary to note that for the purposes of the Industrial Disputes Act, 1947, the expression 'appropriate government' has been defined in Section 2(a)(i) to mean the Central Government in respect of an industrial dispute concerning a banking company. Banking companies are defined in Section 2 (b) to inter alia include a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Parliament also enacted the Industrial Disputes (Banking and Insurance Companies) Act, 1949, Section 4 whereof inter alia provides that notwithstanding anything contained in any other law, it shall not be competent for a State Government or an authority of the State Government to refer an industrial dispute concerning a bank or insurance company for adjudication to any tribunal or authority.

18. Insofar as the third ground of challenge is concerned, there is absolutely no merit in the submission that the Petitioners were not required to participate in the process of selection in pursuance of the settlements dated 16th October, 1992 and 13th August, 1994. The settlement dated 16th October, 1992 enabled

the Bank to consider the case of temporary employees for absorption against permanent vacancies at the state level in two categories. The first category was to comprise of employees who had completed 240 days in the preceding twelve months to be reckoned from the date when the employee had last served or in a block of twelve consecutive months commencing from 15th April, 1980. The second category comprised of employees who had worked for atleast 90 days from 1st January, 1982 till the date of the settlement. In the first category the interse seniority was to be determined on a state-wise basis. The employees in both the categories were required to be recruited in accordance with the recruitment norms. The only relaxation that was provided was in the matter of age and qualification which were to be reckoned on the date of the first engagement. However, both the categories of employees had to undergo the selection procedure. By the second settlement dated 13th August, 1994 the period with reference to which the tenure of service was to be considered was modified as 1st January, 1982 till 31st December, 1989 in both the categories. All the terms and conditions of recruitment, however, continued to apply. In these circumstances, the submission that the Petitioners were not required to undergo the

process of selection

cannot be countenanced.

19. For all the aforesaid reasons, I am of the view that the interference of the Court in the exercise of the jurisdiction under Article 226 of the Constitution is not warranted. The Petitions shall, in the circumstances, stand dismissed. However, there shall be no order as to costs.